

CAUSE NO: 13-10 (F&B)
NAME: FOLLY MOON
ADMINISTRATIVE LAW JUDGE: GARY W. BIPPUS
DATE: AUGUST 13, 2013
COMMISSION ACTION: AFFIRMED

FINDINGS OF FACT

1. Folly Moon is a business located in a building at 114 North Mulberry Street in Muncie, Indiana.

2. Folly Moon is a commercial business, which is open to the public, and its premises contain a stage elevated above floor level and electronic public address equipment for use by live musicians.

3. Folly Moon is a business which offers live music on its premises on most nights that it is open.

4. At all relevant times, Folly Moon did not have a regulated amusement or entertainment permit issued to it by the Division of Fire and Building Safety of the Indiana Department of Homeland Security.

5. Any item which is denominated a Finding of Fact which should be considered a Conclusion of Law is hereby incorporated by reference into the Conclusions of Law.

CONCLUSIONS OF LAW

1. The Department of Homeland Security is an agency within the meaning of Indiana Code 4-21.5.

2. The Agency is the state entity charged with building safety throughout the State of Indiana.

3. Indiana Code 4-21.5, Indiana Code 22-12-1, 22-14-3-1 *et.seq.* and 675 Indiana Administrative Code apply to this proceeding.

4. Indiana Code 22-12-1-23 provides:

"Regulated place of amusement or entertainment" refers to the following:

(1) A theater, opera house, movie theater, dance hall, night club with a stage or floor show, or another place that offers an amusement or entertainment to the public for consideration or promotional purposes.

(2) A place where a boxing, sparring, or unarmed combat match or exhibition is conducted under the supervision of the state athletic commission.

(3) A hall, gymnasium, or place of assembly where a school, college, university, social or fraternal organization, lodges, farmers organization, society, labor union, trade association, or church holds any type of amusement.

(4) A public or private place where a regulated amusement device is operated.

5. Indiana code 22-14-3-5 provides:

(a) This section applies to the following:

(1) Each person who has control over the performance of an amusement or entertainment described in *IC 22-12-1-23*.

(2) Each person who has control over a regulated place of entertainment.

(b) A person described in subsection (a) commits a Class C infraction if:

(1) A regulated place of amusement or entertainment is used for an amusement or entertainment described in *IC 22-12-1-23*; and

(2) No regulated place of amusement or entertainment permit or special event endorsement issued under this chapter covers the conditions at the regulated place of amusement or entertainment that affect fire and explosion safety.

6. Folly Moon is a business governed by the above statutes and is, therefore, statutorily required to obtain a regulated place of amusement or entertainment permit from the Division of Fire and Building Safety of the Indiana Department of Homeland Security.

7. Any item which is denominated a Conclusion of Law, which should be considered a Finding of Fact, is hereby incorporated by reference into the Findings of Fact.

DECISION and ORDER

Folly Moon is a bar providing live music in Muncie, Indiana. As such, it needs a permit issued by the Division of Fire and Building Safety allowing it to operate as a regulated place of amusement or entertainment. Failure to have that permit is a clear violation of Indiana Code 22-14-3-5. By electing not to offer any factual evidence to support his claims about the unconstitutionality of requiring the permit or of charging a fee for the regulated amusement or entertainment permit Mr. Martin has made it practically impossible to consider those claims. The order issued by Inspector Gabbard on March 23, 2013 is **AFFIRMED** in all regards.